IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 157 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL CHEMICAL WORKS

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR JP SHAH for Petitioner No. 1

MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 14/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee, the following question has been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'C' under the provisions of sec. 256(2) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in finding that tax was avoided without ascertaining whether there is any revenue loss on account of non-inclusion of the income in question in the assessee's assessment and its inclusion in the assessment of the sister concerns?"

2. Learned advocate Shri J.P. Shah has appeared for the applicant-assessee whereas Sr. Standing Counsel Shri M.R. Bhatt has appeared for the respondent-revenue.

3. The facts giving rise to the reference, in a nutshell, are as under :

4. The assessee is a partnership firm manufacturing chemicals. The assessee mainly manufactures sodium bisulphate and sodium sulphate. For the relevant assessment year total sales was Rs. 18,37,045/-. Out of the said sales, sale to the tune of Rs. 14,57,661/- i.e. almost 79% of the sales, had been effected by the assessee through its sister concerns, namely, M/s. Patel Chemical Industries, M/s. Harisiddh Chemical Industries, M/s. P.G. Chemicals Industries and M/s. Patel Laboratory Finishers. Partners in all these sister concerns are either partners of the assessee firm or they are persons, who are closely related to the partners of the assessee.

5. In the course of the assessment, the Assessing Officer found that the price at which the goods were sold to the sister concerns was much below the prevailing market price. After purchase of the goods/chemicals from the assessee, the sister concerns had sold the goods to third parties on the same day and in the same lot at a substantially higher price than the price at which the goods were purchased by those sister concerns from the assessee. The Assessing Officer also found that the goods were delivered directly by the assessee to the third parties and the transactions, which had taken place between the assessee and its sister concerns, were practically paper transactions.

6. It was also found by the Assessing Officer that the assessee used to prepare a bill for goods sold in the name of the sister concerns and simultaneously the sister concerns would prepare their own bills so as to sell the goods to third parties at a higher price. The Assessing Officer also found that except one sister concern, namely, M/s. Patel Laboratory Finishers, all other sister concerns were manufacturing concerns not connected with any other trading activity.

7. The Assessing Officer found that huge amount of profit had been diverted by the assessee to the sister concerns by having the aforestated modus operandi. Upon perusal of the record, the A.....JT.....J..T.....

Name of the sister concern	Sale price charged by the assessee to the sister concern	Sale price realized by the sister concern from the sister concern	Difference of amount earned by the sister concern	Percentage of profit diverted to sister concern
Patel Chemical Industries	5,97,466	8,64,718	2,67,252	44.73
Patel Laboratory Finishers	11,880	22,568	10,688	89.96
P.G. Chemicals Industries	4,64,190	5,07,795	43,605	9.39
Harisiddh Chemical Industries	3,84,125	4,40,360	56,235	14.63
Total	14,57,661	18,35,441	3,77,780	

8. In the aforestated circumstances, the Assessing Officer made detailed inquiry and found that the amount of profit was diverted merely by book entries and in fact no real physical commercial transaction had taken place between the assessee and the sister concerns. Coming to the conclusion that the transactions entered into between the assessee and the sister concerns were bogus and were only with an oblique motive to avoid payment of tax by the assessee, the Assessing officer informed the aforestated facts to the assessee and

asked the assessee as to how the sister concerns immediately sold the goods purchased by them from the assessee to third parties and in the same lot/quantity. The assessee was also asked details with regard to the delivery slips issued by the assessee and whether delivery was being made directly to the third parties or to the sister concerns. The assessee was also informed that the partners of the sister concerns were either common or close relatives of the partners of the assessee firm and all the sister concerns were having their offices in the same premises.

9. The assessee could not give satisfactory reply to the Assessing Officer and therefore the Assessing Officer came to the conclusion that the transactions, which had taken place between the assessee and the sister concerns, were sham and bogus and had been entered into only with an intention to see that the tax payable by the assessee is avoided.

10. Upon coming to the aforesaid conclusion, the Assessing Officer added the amount of profit made by the sister concerns from the aforesaid transactions to the profit of the assessee. Thus, a sum of Rs. 3,37,780/- was added in the profit of the assessee.

11. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT (Appeals). The CIT (Appeals) was of the view that the transactions which had taken place between the assessee and its sister concerns, were genuine and, therefore, deleted the addition made by the Assessing Officer.

12. Being aggrieved by the order passed by the appellate authority, the revenue filed an appeal before the Tribunal. The Tribunal had allowed the appeal by confirming the order passed by the Assessing Officer.

13. In the aforestated facts and circumstances of the case, the question, which has been referred to this court, is whether the Tribunal was right in law in finding that tax was avoided without ascertaining whether there was any loss to the revenue on account of the aforestated transaction.

14. Looking to the facts of the case, especially when the Tribunal has confirmed the fact that the assessee had entered into sham and bogus transactions with its sister concerns with oblique motive, this court has to examine whether the Tribunal was right in law in coming to the conclusion whether the assessee

had avoided payment of tax.

15. Learned advocate Shri J.P. Shah appearing for the assessee has submitted that in the instant case the Tribunal has not considered that the amount of tax, which is alleged to have been avoided by the assessee, has already been paid by the sister concerns of the assessee. According to him, in fact, there is no avoidance of tax because the sister concerns had earned income from the said transactions and had paid tax thereon. In other words, the learned advocate has submitted that even if some tax has been avoided, the tax so payable by the assessee has already been paid by the sister concerns of the assessee, who earned profit on account of the said transactions of sale. It has been, therefore, submitted by him that without considering the fact that the amount of tax has already been paid by the sister concerns, the Tribunal ought not to have come to a conclusion that there was avoidance of tax. According to him, if one looks at the overall picture by considering the total amount of tax, which has been paid by the assessee as well as the sister concerns, in fact, there is no avoidance of tax and there is no loss caused to the revenue. It has been, therefore, submitted by him that without ascertaining the fact whether the revenue had suffered any loss, the Tribunal should not have come to a conclusion that payment of tax had been avoided by the assessee.

16. On the other hand, Sr. Standing Counsel Shri M.R. Bhatt has submitted that, in fact, payment of tax had been avoided by the assessee by the aforesaid modus operandi. He has drawn our attention to the facts, which are not in dispute. He has submitted that in this reference application the assessee cannot challenge and has not, in fact, challenged, the findings of the Tribunal. It has been further submitted by him that it is not the case of the assessee that the findings arrived at by the Tribunal are perverse. In the circumstances, it has been submitted by him that on the basis of the findings recorded by the Tribunal, one can come to a conclusion that the assessee had avoided payment of tax.

17. It has been further submitted by the Sr. Standing Counsel that once the revenue comes to a conclusion that payment of tax had been avoided by the assessee, it is not for the revenue to consider as to who paid the tax, or because of avoidance on the part of the assessee, whether any other person has paid the

tax and it is also not necessary for the revenue to look at the overall effect of avoidance of tax. It has been, therefore, submitted by him that in the instant case, once it has been established that payment of tax had been avoided by the assessee, it was not at all necessary for the revenue to see whether the tax, which was avoided by the assessee, was in fact paid by any other person or, in the instant case, by any of the sister concerns of the assessee.

18. We have heard the learned advocates at length. The assessee has not challenged the findings on the ground of perversity. Moreover, it is not in dispute that the goods were sold by the assessee to its sister concerns at a very low price and at times, even at a price lower than the cost of production. It is also not in dispute that the goods, which were sold by the assessee to its sister concerns, were immediately sold to third parties at a subtantially higher rate and in the same lot and delivery of the goods was given by the assessee directly to third parties without sending the goods to the sister concerns. The said facts, which have been ascertained by the Assessing Officer and confirmed by the Tribunal, have become final. Looking to the said fact, the Tribunal has come to a conclusion that payment of tax had been avoided by the assessee.

19. Once it has been established that payment of tax has been avoided, in our opinion, it was not necessary for the revenue to ascertain whether any loss had been caused to it. In our opinion, it was also not necessary for the revenue to see whether the sister concerns had paid tax and if so, how much tax was paid by the sister concerns. We are also of the view that it was not necessary for the revenue to look at the overall effect with regard to receipt of tax by the revenue before coming to the conclusion whether payment of tax was avoided by the assessee. Thus, in our opinion, the Tribunal was right when it came to the conclusion that tax was avoided and for coming to the said conclusion it was not necessary for the Tribunal to ascertain whether any loss was caused to the revenue on account of non-inclusion of income in question in the assessee's assessment and its inclusion in the assessment of the sister concerns.

20. Looking to the peculiar facts of the case, we answer the question in the affirmative, that is, in favour of the revenue and against the assessee.

The reference, thus, stands disposed of with no

order as to costs.

(A.R. Dave, J.)

(A.M.Kapadia, J.)

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